

NYS DEC signed MOA

10/25/2006

Ben R Singh



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUL -3 2002

Michael J. O'Toole, P.E., Director
Division of Environmental Remediation
New York State Department of
Environmental Conservation
625 Broadway
Albany, New York 12233-0001

Dear Mr. O'Toole: *MIKE*

As you are aware, our staff have been working to revise our Underground Storage Tank (UST) (RCRA Subtitle I) Memorandum of Agreement (MOA) to better reflect the current working relationship between our respective agencies and state of the program. I am pleased to enclose the revised MOA for your signature.

I look forward to working with you on this important program. Please feel free to contact me at 212-637-4000 or have your staff contact John Kushwara at 212-637-3766.

Sincerely,

A handwritten signature in black ink, appearing to be "R" followed by a flourish.

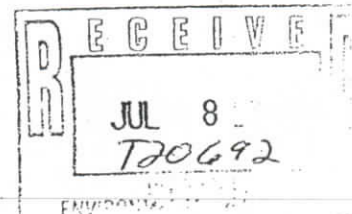
Richard L. Caspe, P.E., Director
Division of Enforcement and Compliance Assistance

Enclosure

RECEIVED

JUL 08 2002

BUREAU OF
SPILL PREVENTION
& RESPONSE



New York State Department of Environmental Conservation
Division of Environmental Remediation, 12th Floor
625 Broadway, Albany, New York 12233-7011
Phone: (518) 402-9706 • FAX: (518) 402-9020
Website: www.dec.state.ny.us



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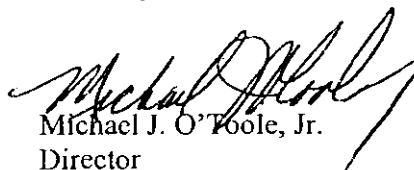
Mr. Richard L. Caspe, P.E.
Director
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

Dear Mr. Caspe:

Enclosed is an executed Memorandum of Agreement between the New York State Department of Environmental Conservation and the U.S. Environmental Protection Agency which sets forth our respective roles in the implementation of the underground storage tank program in New York State.

I appreciate our excellent working relationship in this matter, and look forward to a continuing cooperative sharing of responsibilities to further our respective environmental goals.

Sincerely,



Michael J. O'Toole, Jr.
Director
Division of Environmental Remediation

Enclosure

**RCRA Subtitle I, Revised
Memorandum of Agreement
Between the State of New York
Department of Environmental Conservation
and the
United States
Environmental Protection Agency,
Region 2**

I. GENERAL

This revised Memorandum of Agreement (MOA) sets forth the roles and responsibilities for the United States Environmental Protection Agency (EPA) Region 2 and the State of New York, Department of Environmental Conservation (DEC) for implementing the Federal regulations governing underground storage tanks (USTs) in the State of New York .

This revised MOA is executed in recognition of the existing comparable State program governing USTs, and of the limited resources available to regulate the 34,000 active tanks in New York State. It seeks to ensure that State and Federal UST regulations are administered in a coordinated manner without duplication of effort.

This MOA specifies seven aspects of the EPA technical regulations which New York may wish to incorporate into law or regulation. DEC will consider such changes to State law.

II. GOAL OF EPA'S UST PROGRAM

EPA's goal is to have a State program that is as stringent or more stringent than the Federal program. The fundamental objective is to protect the ground and surface waters from leaking underground storage tanks. The UST program seeks to reach this goal by preventing leaks through upgrading or replacing substandard UST Systems, protecting tanks and pipes from corrosion, installing spill and overfill protection, and equipping UST systems with release detection systems.

III. STATE PROGRAM IMPLEMENTATION

EPA's goal is to provide as much consistency as possible between the Federal and State programs. EPA recognizes that the DEC has had a mature State program for spill prevention and response for the past two decades. The State program predates the Federal UST Program. In 1977, the New York State Legislature enacted Article 12 of the Navigation Law ("Oil Spill Prevention, Control, and Compensation") thus creating one of the first State spill clean-up programs in the nation. This was followed by passage of Article 17, Title 10 of the Environmental Conservation Law ("ECL") entitled "Control of The Bulk Storage of Petroleum" in 1983 and Article 40 of the ECL, entitled "Hazardous Substances Bulk Storage Act" in 1986. These State laws apply to aboveground as well as underground tanks.

Because most of these laws were developed prior to the Federal law, they naturally differ from the Federal UST law in some respects. Nevertheless, they share the same goal of protecting the ground and surface waters from leaking storage tanks. New York's UST program and the delegated local

programs in Suffolk, Nassau, Rockland, Westchester and Cortland counties already provide effective UST management through program approaches which, although different from the Federal UST program, are effective in protecting the environment from leaking underground storage tanks. In implementing the Federal UST program in New York State, EPA recognizes that there is more than one way to ensure sound UST management and that different regulatory approaches in the State may be warranted.

EPA's goal is to ensure that a basic level of protection is maintained. At the same time, it wants to avoid setting requirements that would prevent or discourage the development of sound State and local UST programs. The aim is to develop a State-Federal partnership that will allow both parties to focus on preventing USTs from causing environmental contamination.

IV. DURATION OF MOA

This Agreement will remain in effect until such time as a revised MOA for the State program is signed. Prior to that time, each signatory may withdraw from this Agreement for any reason provided the other signatory is given at least 90 days advance notice.

V. STATE TASKS

The Federal UST regulations specify certain tasks that involve reporting to the implementing agency. The DEC will continue to implement the eight technical reporting tasks and five financial responsibility reporting requirements listed below. All other tasks and responsibilities of the

“implementing agency” mentioned in the Federal UST regulations will continue to be assumed by EPA unless otherwise agreed by DEC and EPA.

A TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS (40 CFR PART 280, SUBPARTS A-G)

1. TASKS IMPLEMENTED BY DEC

DEC will continue to act as the implementing agency for the following technical reporting requirements:

- a. Receive reports and/or answer calls reporting releases, including suspected releases [280.50], spills and overfills [280.53], and confirmed releases [280.61];
- b. Receive reports of corrective actions taken or planned, including initial abatement measures [280.62(b)];
- c. Receive initial site characterization reports [280.63];
- d. Receive free product removal reports and determine the practicable extent for free product removal [280.64];
- e. Under certain conditions, request and receive reports of investigations of the

magnitude and extent of soil and groundwater contamination [280.65];

- f. Receive, review, and evaluate required and voluntarily submitted corrective action plans [280.66]. For each corrective action plan required, provide appropriate notice to the public of the release and the corrective action plan, as necessary [280.67]. Oversee implementation of corrective action plans;
- g. Receive notifications prior to permanent closure or change-in-service [280.71]; and
- h. Receive records of excavation zone assessments at closure if the records cannot be kept at the site or an alternate site for 3 years [280.74].

2. STATUTORY & REGULATORY CHANGES

DEC also agrees to consider statutory and/or regulatory changes relative to the following seven areas:

- a. Scope of the tank universe to include all federally regulated underground storage tanks greater than 110 gallons;
- b. Change in the definition of "petroleum" to be as stringent as the Federal definition;

- c. Upgrading Existing UST Systems [281.31];
- d. Development of requirements for spill prevention equipment that are no less stringent than the standards set forth by EPA [281.30(b)];
- e. Release Detection for Tanks & Piping [281.33 (b)(2),(c), (d)(1)(ii), & (e)(1)];
- f. Out-of-Service UST Systems and Closure [281.36(a)(4)& (b)]; and
- g. General Operating Requirements [281.32].

EPA agrees to provide comments on any proposed revisions to the regulations and on draft legislation within thirty (30) workdays of their submittal to EPA. Upon request by DEC, EPA agrees to assist DEC as appropriate in its efforts to obtain passage of any legislation needed to enhance the State program.

B. FINANCIAL RESPONSIBILITY REOUIREMENTS (40 CFR PART 280, SUBPART H)

1. TASKS IMPLEMENTED BY DEC

DEC will continue to act as the implementing agency for the following financial responsibility reporting requirements:

- a. Receive State Attorney General's certification that guarantees and/or surety bonds are legally valid and enforceable obligations in the State [280.94(b)];
- b. Receive notices that owners or operators no longer meet the financial test of self insurance [280.95(g)];
- c. Receive notifications of cancellation or non-renewal of coverage [280.109];
- d. Receive copies of the financial responsibility mechanisms from owners and operators in the event of a release or in the event of a failure by the owner or operator to obtain alternate coverage within 30 days of the owner or operator receiving notice of the incapacity of a provider of financial assurance or notice of another event listed in 280.110(a)(2); and
- e. Receive notices from owners or operators of the commencement of voluntary or involuntary bankruptcy proceedings and copies of financial assurance instruments documenting current financial responsibility [280.110(a)].

2. FINANCIAL RESPONSIBILITY TASKS IMPLEMENTED BY EPA

EPA will continue to:

- a. Receive description of, evaluate and determine acceptability of use and notify states of determination of adequacy of State trust funds and other State (including State-required) assurance mechanisms [280.110 and 280.101]. Within 60 days of approval by EPA of the financial assurance mechanism(s), the DEC will provide to each owner/operator for which the State is assuming financial responsibility a letter or certificate to that effect [280.101(d)];
- b. Instruct the trustee of a trust fund to release the excess funds to the owner/operator [280.102(f)] (This refers to owner/operator trust funds, not State or standby funds.);
- c. Instruct the trustees to refund balances of standby trust funds to providers (guarantors) after all costs and claims have been settled. [280.103(c)];
- d. Direct guarantors sureties and institutions issuing letters of credit to deposit money into standby trust funds [280.112(a)]; and
- e. Effect the drawdown of standby trust funds [280.112(b)].

3. DEC PROGRAM DEVELOPMENT TASKS

In addition, DEC agrees to carry out the following "optional" tasks in cooperation with EPA to enhance program's capability in the area of financial responsibility:

- a. Request and receive reports of financial condition at any time [280.95 (f)] ; and
- b. Request and receive evidence of financial assurance or other information from owners and operators at any time [280.110(c)].

VI. COMPLIANCE MONITORING AND ENFORCEMENT OF FEDERAL UST REGULATIONS

A. **ENFORCEMENT RESPONSIBILITIES OF DEC**

DEC agrees to:

1. Note, record and share with EPA information on violations of the Federal UST regulations identified during the normal course of DEC's PBS inspections (or at other times) and undertake such other compliance monitoring and enforcement activity as is possible, to the extent of DEC's legal authority and resources. As part of this program, DEC will conduct compliance inspections and use other mechanisms to assess compliance with UST standards, compliance schedules, and all other program requirements;
2. For those facilities where violations of Federal UST requirements are noted, send a copy of the inspection reports or equivalent information in digital form to EPA Region 2;
3. Maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public; and
4. Consult with EPA and provide documents on audit agreements that DEC negotiates with

companies or other entities that include auditing for compliance with Federal UST requirements.

B. ENFORCEMENT RESPONSIBILITIES OF EPA

1. EPA will, as resources permit, take enforcement action when DEC requests such action or where EPA determines such action is necessary. EPA retains its right to issue orders and bring actions under Subtitle I of RCRA and any other applicable Federal statute. With regard to Federal enforcement, it is EPA's expectation that it will not take such action where the State has taken timely and appropriate enforcement action. Before performing an inspection and/or issuing an administrative Complaint and/or compliance order (excluding federal UST field citations), EPA will normally notify the State at least 5 days in advance. Nothing in this agreement is intended to restrict EPA's right to inspect any underground storage tank facility or bring an enforcement action against any person believed to be in violation of the requirements of Subtitle I ;
2. EPA will publicize the results of successful significant enforcement cases; and
3. EPA will submit to DEC copies of all field citations, Section 9005 information request letters, and administrative Complaints and Orders issued.

VII. OVERSIGHT AND REPORTING

DEC will furnish a semi-annual report to EPA Region 2 by May 1 and November 1 of each year, which will enable EPA Region 2 to extract information needed to satisfy reporting requirements imposed on it by statute, regulation, or written direction from EPA Headquarters. An annual

program evaluation will be made by Region 2 and furnished to DEC no later than 30 days after the receipt of the final semi-annual report of the Federal fiscal year.

VIII BENEFICIARIES OF THIS AGREEMENT

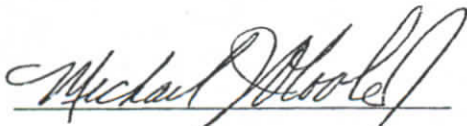
This document is intended solely to memorialize the roles and responsibilities of the signatories in implementing the Federal UST program. Nothing herein is intended to create any rights, substantive or procedural, enforceable by or accruing to third parties.

IX. AMENDMENT OF MOA

This MOA can be amended by agreement of both parties. It is effective upon signature of both parties below, and will remain in effect until withdrawal from the agreement occurs as outlined in Section IV.

**New York State Department of
Environmental Conservation**

U.S. Environmental Protection Agency



Michael J. O'Toole, Jr., P.E., Director

Division of Environmental Remediation



Richard L. Caspe, P.E., Director

Division of Enforcement & Compliance

Assistance